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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Federal-State Joint Board on Universal Service)
Seeks Comment on Review of Lifeline and)
Link-Up Service for All Low-Income Consumers)

CC Docket No. 96-45

**COMMENTS OF
NATIONAL ALEC ASSOCIATION/PREPAID COMMUNICATIONS ASSOCIATION**

The National ALEC Association/Prepaid Communications Association ("NALA/PCA"), by its attorneys, hereby files these comments in response to the public notice issued by the Federal-State Joint Board on Universal Service ("Joint Board") regarding review of Lifeline and Link-Up Service in the above referenced docket number.¹

Pursuant to the Commission's request, the Joint Board is investigating the "effectiveness of the Commission's existing Lifeline/Link-Up rules."² The Joint Board has asked for comments on how the Federal Lifeline/Link-Up program can be improved and how to "increase public awareness and understanding of Lifeline/Link-Up."³

Most importantly, increasing the number of telecommunications companies serving low-income consumers through the Lifeline/Link-Up program will improve the program. Increased competition among telephone companies offering Lifeline/Link-Up service to qualified

¹ See *Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service for All Low-Income Consumers*, 66 Fed. Reg. 54,967 (Oct. 31, 2001).

² *Id.* at 54,698.

³ *Id.* at 54,969-70.

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consumers will stimulate creative and effective outreach to educate the public about the program, making the service more widely available.

Background

NALA/PCA is a trade association comprised of companies (“Members”) that since 1996 have been providing prepaid local telephone service to residential customers. Members’ customers are primarily low income, ethnically diverse individuals. These customers do not qualify for service from traditional telephone companies because their telephone service has been disconnected for nonpayment by their incumbent local exchange carrier (“ILEC”), they have past due balances, they have poor credit histories, they cannot provide a security deposit, or they lack sufficient identification.

NALA/PCA Members resell the flat rate, local telephone services of ILECs. Members’ customers get unlimited local calling and may subscribe to features such as caller ID, call waiting and call forwarding. In many cases, the service provided by Members is the only option for local telephone service, including access to 911 emergency service. Today, the Members provide service to more than 500,000 residential customers throughout the United States.

Funds for Universal Service support mechanisms are intended to promote affordable local service to low-income consumers by compensating telephone companies for the cost of providing these service discounts. The Lifeline/Link-Up program allows qualified consumers to receive a monthly service discount ranging from \$5.25 to \$7.85, and a discount of half the carrier’s initial connection fee up to \$30.00.⁴ “Eligible” carriers providing such discounts may receive from the fund the savings they have passed on to customers.

⁴ See FCC *Consumer Facts: The FCC’s Universal Service Program for Low-Income Consumers*, available at www.fcc.gov/cib/consumerfacts/lowincome.html.

Many states require local resellers to offer Lifeline/Link-Up service to qualified consumers. The Commission has held that section 252(d)(3) requires “eligible” carriers to charge resellers providing Lifeline/Link-Up Service the Lifeline/Link-Up rate discounted.⁵ The underlying incumbent carriers, however, frequently impose administrative hurdles for the Members attempting to order Lifeline service for Lifeline-eligible customers. In some cases, incumbent carriers have refused to provide resellers a Lifeline rate, insisting that they are only obligated to give resellers the standard wholesale discount.

The Commission is charged with “ensur[ing] affordable basic service continues to be available to all users through an explicit universal service funding mechanism.”⁶ “Eligible” carriers are only entitled to receive support that is “explicit and sufficient” for the “provision, maintenance, and upgrading of facilities and services” for the purpose of Universal Service support mechanisms.⁷ These provisions are intended to promote the Commission’s mission of “bring[ing] the benefits of competition to as many consumers as possible.”⁸

The Commission has found carriers are “eligible” when they provide service using their own facilities, in whole or in part.⁹ “Facilities” in this case are defined as “any physical components of the telecommunications network that are used in the transmission or routing” of

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776 at para. 163 & n.415 (1997) (hereinafter “*Report and Order*”)

⁶ *Id.*, at para. 2 .

⁷ 47 U.S.C. § 254(e) (Supp. IV 1998).

⁸ *Report and Order*, at para. 2.

⁹ *Id.*, at para. 24.

the Universal Service support mechanisms.¹⁰ The Commission has declined to adopt a more restrictive definition of “facilities” because it “fear[ed] [that it would] thwart competitive entry into high cost areas.”¹¹ The Joint Board and the Commission are authorized to advance new universal service principles that are “necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.”¹²

Discussion

ALL LOCAL EXCHANGE CARRIERS, INCLUDING RESELLERS, SHOULD BE QUALIFIED TO DRAW FROM MONIES ALLOTTED FOR THE PROVISIONING OF LIFELINE/LINK-UP SERVICE

All resellers, including the Members, should be compensated for providing Lifeline/Link-Up service. Expanding the pool of service providers that are qualified to receive compensation will promote the program’s aims by increasing competition (and choices) for low-income consumers. Because the Members market to low-income consumers, they have the expertise of how to best reach these individuals.

Although the 1996 Act’s Universal Service provisions only authorize “eligible” carriers to receive “specific Federal universal service support,”¹³ the Act does not prohibit these monies from being distributed beyond the accounts of “eligible” carriers. NALA/PCA recommends that the funds distributed to “eligible” carriers should be deemed held in trust to compensate all telecommunications service providers that provide Lifeline/Link-Up service to low-income

¹⁰ *Id.* A carrier providing service via the wholesale purchase of unbundled network elements is deemed to be “eligible” as facilities based. See *id.*, at para. 158.

¹¹ *Id.*, at para. 24.

¹² 47 U.S.C. § 254(b)(7) (Supp. IV 1998).

¹³ 47 U.S.C. § 254(e) (Supp. IV 1998).

consumers.¹⁴ This will substantially enlarge the pool of carriers striving to bring telephone service to the 21 percent of low-income consumers that do not have service.

All resellers should be encouraged to provide service to low-income consumers. Because resellers are not compensated for the discounts customers receive under the program, they alone must bear the cost or choose not to participate. Given that many states require resellers to provide Lifeline/Link-Up service, resellers often cannot choose to not participate. The 1996 Act recognizes that it is unrealistic to expect carriers to absorb the discount provided through the Lifeline/Link-Up program. The present regime only serves to discourage resellers from reaching out to offer low-income consumers with this service. This absurd result hurts low-income consumers and is inconsistent with the public policy goals established in the 1996 Act's Universal Service provisions.

The Commission has the authority to promote the Lifeline/Link-Up program by creating a system in which resellers providing Lifeline/Link-Up service draw from the funds distributed to "eligible" carriers. Lifeline/Link-Up service funds should be distributed to "eligible" carriers for the services they provide directly to their own low-income consumers and for the services provided by their resellers. "Eligible" carriers will retain the funds compensating them for providing the discount directly to low-income consumers. The remainder of the funds will be held by "eligible" carriers in a trust for compensating carriers reselling "eligible" carriers' services under the Lifeline/Link-Up program. The resellers, as "drawees," would receive

¹⁴ A trust is "a property interest held by one person at the request of another for the benefit of a third party." *Black's Law Dictionary* 1513 (7th ed. 1999). In this case, the trust would be held by the "eligible" carrier at the request of the Joint Board and the Commission for the benefit of the Lifeline/Link-Up service provider.

compensation for the Lifeline/Link-Up discounts they give qualified customers from the trust held by “eligible” carriers.


The Commission should also direct “eligible” carriers to give resellers providing Lifeline/Link-Up service the Lifeline rate for Lifeline-eligible customers. Under the present system, resellers operating in states requiring them to participate in the program are bearing the cost of the program. This only serves to harm competition because of the additional financial burden to operate in these states.

Conclusion

Based on the foregoing, NALA/PCA urges the Commission to act in accordance with these comments.

Respectfully submitted,

**NATIONAL ALEC ASSOCIATION/
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Dated: December 31, 2001

CERTIFICATE OF SERVICE

I, Angela M. Green, hereby certify that on this 31st day of December 2001, the foregoing document has been sent to the following via hand delivery:

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